

REMARKS

Claims 1-18 are pending. By this Amendment, the Abstract and Claims 1, 2, 3, 5, 8, 9, 10, and 15 are amended, claim 7 is canceled.

The Abstract

The Office Action noted that the abstract should not refer to the purported merits or speculative applications of the invention and should not compare the invention with the prior art. The Abstract has been amended to remove these references.

Claim Objections

Claims 3 and 16 are objected to because of informalities noted by the examiner. These claims have been corrected in accordance with the examiner's suggestions and Applicant requests withdrawal of the objections in view of these amendments.

Rejections under 35 U.S.C. § 112

Claims 1, 3, 4, 7-9, and 15 stand rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Each of these claims has been amended in accordance with the examiner's suggestions and so Applicant requests withdrawal of the rejections in view of the amendments made.

Rejections under 35 U.S.C. § 103

**A. *Claims 1,2, and 5-9***

Claims 1, 2, and 5-9 stand rejected under 35 U.S.C. § 103 as obvious over Joyce '904 in view of Battaglia '407. Although substantial amendments have been made to more particularly

distinguish the cited references from the claimed invention, applicant respectfully traverses this rejection. Care has been taken not to add new matter. Regarding claim 1, applicant respectfully notes that Joyce does not teach an “integral” pocket modules as “integral” is intended to be interpreted in the application. Claim 1 as amended requires that the portions are connected at “folds” and formed from a “single piece of plastic”. This is not disclosed or suggested in Joyce or Battaglia. Joyce discloses components being assembled to form the pockets and does not disclose an integral pusher portion. Battaglia also discloses the pocket module formed from a number of different components not integral with one another, not formed from a single piece of plastic material, and not connected by folds, not all being of uniform all of which are required by claim 1.

Claim 2 now claims a G-shaped extrusion with integral back side wall portion, integral base wall portion, and integral front wall portion. Neither Joyce nor Battaglia disclose a G-shaped extrusion, nor a G-shaped extrusion with the “integral” components, for example, the horizontally extending integral top wall portion.

Claims 5, 6, 8, and 9 depend upon independent claim 1 which is now believed to be allowable so these claims are similarly allowable. Claim 7 has been canceled.

Because Joyce and Battaglia, singly or in combination, do not disclose all the limitations present in claims 1, 2, and 5-9, a *prima facie* case of obviousness has not been established. Thus, Applicant respectfully requests reconsideration and withdrawal of this rejection.

**B.      *Claims 3 and 4***

Claims 3 and 4 stand rejected under 35 U.S.C. § 103 (a) as obvious over Joyce in view of Battaglia as applied to claims 1, 2, 5-9, and further in view of Burrell. Although amendments have been made to more particularly distinguish the invention over the cited references, the

rejection is traversed. Neither Joyce, nor Battaglia, nor Burrel disclose a G-shaped extrusion that form the shelves. Reconsideration and withdrawal of this rejection is respectfully requested.

**C.     *Claims 10-14 and 15***

Claims 10-14 and 15 are rejected under 35 U.S.C. § 103 (a) as obvious over Battaglia, in view of Heinen. Although the rejection is traversed, substantial amendments have been made to claim 10 to distinguish it from the prior art references. Specifically, claim 10 now claims that the sidewall portions, the portion extending between the sidewall portions, and the pusher portion, are all formed of a single piece of sheet material and wherein each portion connected to another portion is connected at a fold... It is respectfully submitted that neither Battaglia nor Heinen disclose or suggest such. In that claims 11 through 14 depend from claim 10, which is now believed to be allowable, these claims also should be allowable.

**D.     *Claims 15-18***

Claims 15-18 stand rejected are rejected under 35 U.S.C. § 103 (a) as obvious over Heinen, in view of Joyce. The rejection asserts that Heinen *et al.* teach a pusher portion that extends from the back wall. The rejection further asserts that “the claims do not require that the pusher portion be ‘attached’ to the back wall *portion* and thus the pusher is considered to ‘extend’ from the back side.” Applicant respectfully traverses this rejection. Heinen *et al.* teach a separate “slide member” that could not be formed from heating and bending each of the cut out portions thereby forming a unitary pocket module. Applicant first respectfully notes that the examiner’s definition of “unitary” does not fit the context of the claim, which specifies that “each cut out portion providing for a pair of sidewall portions, a portion for extending between the sidewall portions, and a pusher portion...” The claimed unitary pocket module is formed by “heating and bending forming folds in each of the cut out portions... the sidewall portions, the

portion for extending between the sidewall portions, and the pusher portion all connected by way of the folds formed by the heating and bending” Neither Heinen nor Joyce disclose or suggest forming folds by heating and bending. Heinen *et al.* teach a separate slide member that could not be formed by bending a cut out that also provides for sidewalls and the portion between the sidewalls. Thus, the sliding and detached pusher of Heinen *et al.* teaches away from the claimed unitary pusher formed by heating and bending a cut out that also integrally forms the sidewalls and the portion in between the sidewalls and the folds that connect the portions.

Applicant respectfully disputes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the modules by heating and bending plastic thereby allowing ease in economy and manufacture, as contended by the examiner. Applicant traverses the assertion and specifically requests the provide references or if within the personal knowledge of the examiner, applicant requests an affidavit and the opportunity to rebut same.<sup>1</sup>

In that claims 16-18 depend upon what is now believed to be an allowable claim 15, these claims should be allowable.

In view of the foregoing amendments to the pending claims and the reasons proposed herein, Applicant submits that all pending claims are in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

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<sup>1</sup> See, M.P.E.P. § 2144.03 (“If justified, the examiner should not be obliged to spend time to produce documentary proof. If the knowledge is of such notorious character that official notice can be taken, it is sufficient so to state. In re Malcolm, 129 F.2d 529, 54 USPQ 235 (CCPA 1942). If the applicant traverses such an assertion, the examiner should cite a reference in support of his or her position. When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons. See 37 CFR 1.104(d)(2)”).

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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